

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-116190-08

Date:

October 01, 2008

LEGEND

Property =

City =

Sellers =

Date =

Buyer 1 =

Buyer 2 =

Dear :

This letter responds to a request for a private letter ruling concerning certain federal income tax consequences to Buyer 2 of its purchase of a remainder interest in the Property.

FACTS

Property is improved real property consisting of residential apartments, commercial retail space, and parking facilities located in City. Sellers are three limited partnerships.

As part of the sale of Property on Date, Sellers entered into purchase and sale agreements for Property with Buyer 1 and Buyer 2. The agreements with Buyer 1 provide for the purchase of a 50-year estate for years in Property (the “Lead Interest”). The agreements with Buyer 2 provide for the purchase of a remainder interest in Property (the “Remainder Interest”). It is represented that Buyer 2’s purchase will neither directly nor indirectly be funded by Sellers or Buyer 1. The agreements provide that Buyer 2 has the unrestricted right to sell, assign, encumber, or otherwise dispose of all its rights in the Remainder Interest. Buyer 2 plans to hold the Remainder Interest as a long-term investment.

It is represented that each direct and indirect owner of Sellers is unrelated within the meaning of § 267 of the Internal Revenue Code to each direct and indirect owner of Buyer 1 and Buyer 2. Further, each direct and indirect owner of Buyer 1 is unrelated within the meaning of § 267 to each direct and indirect owner of Buyer 2.

RULINGS REQUESTED

Buyer 2 has requested the following rulings:

1. Buyer 2 will not recognize income, gain or loss either prior to or at the time when the Remainder Interest vests in possession upon the expiration of the Lead Interest; and
2. Buyer 2’s holding period with respect to the Property will begin on the day after Buyer 2 purchases the Remainder Interest from Sellers.

LAW AND ANALYSIS

Section 61 provides, in general, that gross income means all income from whatever source derived, including gains derived from dealings in property.

Section 1001(a) provides, in part, that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis determined under section 1011.

Section 1001(b) provides, in part, that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

Section 1222(3) provides that the term “long-term capital gain” means gain from the sale or exchange of a capital asset held for more than 1 year, if and to the extent such

gain is taken into account in computing gross income. Section 1222(4) provides that the term “long-term capital loss” means loss from the sale or exchange of a capital asset held for more than 1 year, if and to the extent such loss is taken into account in computing gross income.

Upon Buyer 2’s purchase of the Remainder Interest, Buyer 2 obtained a fee ownership interest in Property under which it has an unrestricted right to sell, assign, encumber, or otherwise dispose of, all of its rights in the Remainder Interest. Upon expiration of the Lead Interest, Buyer 2 will continue to own a fee ownership interest, except that the interest will change from non-possessory to possessory.

That Buyer 2’s ownership interest ripens into exclusive ownership and possession by the passage of time is of no consequence under §§ 61, 1001 and 1222. *Cf. Helvering v. Gambrill*, 313 U.S. 11 (1941), 1941-1 C.B. 364 (The phrase “property held by the taxpayer” under a prior law holding period rule relating to capital gains and losses includes not only full ownership, but also any interest owned whether vested, contingent, or conditional. Thus, the holding period of property that the taxpayer received as a remainderman under a trust established by his grandmother’s will dated from his grandmother’s death rather than the date that the taxpayer’s remainder interest ripened into possession); *Kruesel v. United States*, No. 3-62-Civ. 224 (D. Minn. 1963) (taxpayer is not treated as selling his entire interest in property where the taxpayer reserved an estate that had the essentials of a life estate); and Rev. Rul. 77-413, 1977-2 C.B. 298 (taxpayer is not treated not selling his entire interest in property where he reserved a 20-year term interest in the property and had all the benefits and burdens of ownership of the interest during that term.)

Rev. Rul. 70-598, 1970-2 C.B. 168, holds that in determining the holding period for a capital asset, the day the asset is purchased is excluded and the day the asset is sold is included.

CONCLUSION

Based on the information submitted and the representations made, we conclude as follows:

1. Buyer 2 will not recognize income, gain or loss either prior to or at the time when the Remainder Interest vests in possession upon the expiration of the Lead Interest; and
2. Buyer 2’s holding period with respect to the Property will begin on the day after Buyer 2 purchases the Remainder Interest from Sellers.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

The taxpayer must attach a copy of this letter to any return to which it is relevant. A taxpayer that files its returns electronically may satisfy this requirement by attaching a statement to its return that provides that the date and control number of this letter ruling. See § 7.05 of Rev. Proc. 2008-1, 2008-1 I.R.B. 1.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by Buyer 2 and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: